

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DAVID EARL MILLER)	
NICHOLAS TODD SUTTON)	
STEPHEN MICHAEL WEST)	No. 3:18-cv-1234
TERRY LYNN KING)	
)	Judge Campbell
Plaintiffs)	
)	Death Penalty Case
v.)	<i>Execution date Dec. 6, 2018</i>
)	<i>for David Miller</i>
TONY PARKER, Commissioner,)	
Tennessee Department of Correction,)	
in his official capacity,)	
)	
and)	
)	
TONY MAYS, Warden,)	
Riverbend Maximum Security)	
Institution, in his official capacity,)	
)	
Defendants.)	

MOTION FOR TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff David Earl Miller in the above matter and, pursuant to Rule 65 Fed. R. Civ. P, moves the Court to issue a temporary restraining order enjoining Defendants, their agents, and assigns from presenting, and/or giving effect to, the “Affidavit Concerning Method of Execution” (or “method of execution form”) until such time as the Court has ruled upon Miller’s Motion for Reconsideration of Order on Motion for Temporary Restraining Order and/or Preliminary Injunction.

IN SUPPORT HEREOF, Plaintiff Miller would show to the Court as follows:

1. Miller has this day sought reconsideration (Doc. 23) of this Court's order denying his motion for preliminary injunction. (Doc. 20).
2. Miller filed his motion for reconsideration at the earliest possible date given the complex issues presented and the substantial review of the state court record required to provide the Court with critical facts.
3. The motion for preliminary injunction (Doc. 7) sought to prevent Defendants from presenting Miller with an Affidavit Concerning Method of Execution electing electrocution (*see* Doc. 1-5).
4. Subsequent to the filing of that motion, Plaintiff Miller has been ordered by Defendant Mays to either accede to be executed by electrocution and relinquish his right to challenge electrocution on or before 5:00 P.M., November 20, 2018, or else Defendants will execute him by a method of execution which inflicts substantially greater pain and suffering in violation of the *ex post facto* clause of the Constitution. (*See* Doc. 19-2).
5. Given Defendant Mays' demand, Miller will be subjected to the harm he alleges in Count Four no later than 5:00 P.M. tomorrow.
6. For the reasons set forth in his memorandum in support of the motion to reconsider, (*see* Doc. 24), there exists a substantial likelihood the Court will grant his motion and enter a preliminary injunction in this matter to preserve the status quo pending its final disposition.

7. For the reasons set forth in his memorandum in support of the motion to reconsider, *see* Doc. 24, Defendants will suffer little or no harm from a brief stay in order that the Court may reconsider its order denying preliminary injunctive relief.
8. Because: (1) there exists a substantial likelihood this Court will grant Miller's motion for reconsideration; (2) Miller will be subjected to the harm he alleges in Count Four of his Complaint; and, (3) Defendants will suffer no harm from maintaining the status quo until the motion to reconsider is decided, Miller's request for this Temporary Restraining Order should be granted.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, this Motion for Temporary Restraining Order was filed electronically via the Court's electronic filing system upon the following person. Parties may access this filing through the Court's electronic filing system.

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